



October 17, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-4692

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153503.

The Texas Department of Criminal Justice (the "department") received a written request for "the two (2) last fire drills that were conducted in the segregation area of the Powledge Unit and the officers names that took this proscribed [sic] procedure." The requestor also seeks the department's responses to certain inmate correspondence. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.108(b)(1) and 552.131, respectively, of the Government Code.¹

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would unduly interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You have submitted to this office as responsive to the request a "Powledge Unit Fire Drill Checklist" for the two most recent fire drills. You contend these documents are excepted from public disclosure under section 552.108(b)(1) because

¹We assume the department has released the other requested information to the requestor. If it has not, it must do so at this time. See Gov't Code § 552.301(e), .302.

[t]he details of drills and the reports about them provide even a casual reviewer a great deal of minutia[e] about staffing patterns, physical resources, staff reactions, and also our sense of what constitutes a "typical" emergency. If inmates or other persons with evil intent could read our minds in advance and therefore knew what kinds of events we create as emergencies, how we responded, and who responded, they would know how to create their own emergencies with a fairly accurate idea about our likely response. Knowing what we would do and what we would likely not do would tell someone how to create the flow and then use it to their advantage.

Given these representations, we agree that the submitted information about a fire drill response could undermine prison security. Accordingly, we conclude that the two fire drill checklists you submitted to this office may be withheld in their entirety pursuant to section 552.108(b)(1) of the Government Code.

With regard to the records responsive to the request for the department's responses to certain inmate correspondence, please note that section 552.131 of the Government Code, as added by chapter 783, Acts of the 76th Legislature, relating to inmates of the department, has been renumbered as section 552.134 of the Government Code. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(53) (codified at Gov't Code § 552.134). Section 552.134(a) of the Government Code provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or [552.134], the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.134 is explicitly made subject to section 552.029. The records you submitted as responsive to the second aspect of the request consist of form letters titled "Offender Correspondence." Although none of these form letters contains any direct information about the inmate, the letters do reveal the general nature of the correspondence directed to the department by the inmate. As such, we believe that the form letters constitute "information about an inmate" that is made confidential under section 552.134. Accordingly, we conclude that the "Offender Correspondence" form letters must be withheld under section 552.134 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

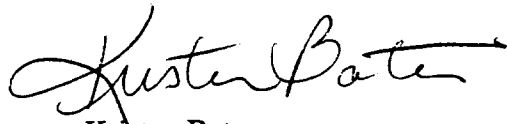
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KB/RWP/seg

Ref: ID# 153503

Enc. Submitted documents

c: Ms. Alice Hendricks
P.O. Box 292
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(w/o enclosures)